IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of:
Jules S. Cohen, et al.

Confirmation No.: 2394

Application No.: 09/768,446

Group Art Unit: 2151

Filing Date: January 24, 2001

Examiner: Jean, Frantz B.

For: SYSTEM AND METHOD FOR INCREMENTAL AND REVERSIBLE DATA MIGRATION AND FEATURE DEPLOYMENT

DATE OF DEPOSIT: August 22, 2005

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REGISTRATION NO.: 43,963

MS Appeal Brief - Patent
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF TRANSMITTAL
PURSUANT TO 37 CFR § 1.192

Transmitted herewith in triplicate is the APPEAL BRIEF in this application with respect to the Notice of Appeal received by The United States Patent and Trademark Office on **April 22, 2005.**

☐   Applicant(s) has previously claimed small entity status under 37 CFR § 1.27 .

☐   Applicant(s) by its/their undersigned attorney, claims small entity status under 37 CFR § 1.27 as:

         ☐   an Independent Inventor

         ☐   a Small Business Concern

         ☐   a Nonprofit Organization.

☒   Petition is hereby made under 37 CFR § 1.136(a) (fees: 37 CFR § 1.17(a)(1)-(4) to extend the time for response to the Notice of Appeal filed April 22, 2005 to and through August 22, 2005 comprising an extension of the shortened statutory period of two months.

	SMALL ENTITY		NOT SMALL ENTITY	
	RATE	FEE	RATE	FEE
☒ APPEAL BRIEF FEE	$250	$	$500	$500.00
☐ ONE MONTH EXTENSION OF TIME	$60	$	$120	$0
☒ TWO MONTH EXTENSION OF TIME	$225	$	$450	$450.00
☐ THREE MONTH EXTENSION OF TIME	$510	$	$1020	$0
☐ FOUR MONTH EXTENSION OF TIME	$795	$	$1590	$0
☐ FIVE MONTH EXTENSION OF TIME	$1080	$	$2160	$0
☐ LESS ANY EXTENSION FEE ALREADY PAID	minus	($)	minus	($0)
TOTAL FEE DUE		$0		$950.00

☒   The Commissioner is hereby requested to grant an extension of time for the appropriate length of time, should one be necessary, in connection with this filing or any future filing submitted to the U.S. Patent and Trademark Office in the above-identified application during the pendency of this application. The Commissioner is further authorized to charge any fees related to any such extension of time to Deposit Account 23-3050. This sheet is provided in duplicate.

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Date: August 22, 2005

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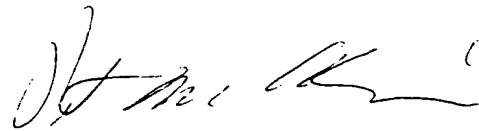## PURSUANT TO 37 CFR § 1.192

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Jules S. Cohen, *et al.*   **Confirmation No.:** 2394

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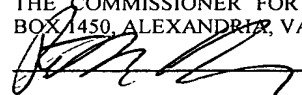
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APPEAL BRIEF UNDER 37 C.F.R. § 1.192

This is an appeal from the final rejection of claims 8-14, 26-30, and 33-39 in
an Official Action dated December 22, 2004 and subsequent Advisory Action dated
March 1, 2005. Appellants filed a Notice of Appeal from the Examiner's final
rejection on April 22, 2005.

This appeal brief is being submitted in triplicate, pursuant to 37 C.F.R. §
1.192(a).

Appellants request that the Examiner's final rejection be reversed and that the
application be remanded to the examining group for allowance.

TABLE OF CONTENTS

A. REAL PARTY IN INTEREST

The real party in interest in the present appeal is Microsoft Corporation, based on an Assignment recorded on May 4, 2001 at Reel 011777, Frame 0333.

B. RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences known to the Appellants, the Appellants' legal representative, or the Assignee that will directly affect or be directly affected by or have a bearing on the Board's decision in the present appeal.

C. STATUS OF CLAIMS

Claims 8-14, 26-30, and 33-39 are the remaining claims in the application they stand rejected. Accordingly, claims 8-14, 26-30, and 33-39 are now on appeal. Claims 8-14, 26-30, and 33-39 are reproduced in the Appendix.

D. STATUS OF AMENDMENTS

A final rejection of claims 8-14, 26-30, and 33-39 dated December 22, 2004 was received. An advisory action dated March 1, 2005 maintains the rejection of claims 8-14, 26-30, and 33-39.

E. SUMMARY OF THE INVENTION

The present invention provides a technique for incremental and reversible deployment of a feature, so that the feature may be tested first on a small scale, and such that the scope of the deployment may be broadened or narrowed on demand. Incremental deployment of a new feature allows the effect of early-discovered "bugs" or other problems to be contained within a small segment of users, and also limits the investment of resource to support the feature (e.g. new computing equipment) while the feature is being tested. The technique of the invention is particularly well-adapted for testing new features on a widely-used public web site such as a portal site. The technique is particularly useful for incrementally deploying a redesign of the web

site's architecture such that the location at which data is stored is changed from one place to another.

The technique of the present invention may be used to incrementally relocate web site customization data from a client to a server. For example, the web site may initially maintain the customization data in the form of client-side cookies, and the administrators of the web site may wish to relocate this data to a centrally-located data store. However, deploying this change to all users at once would require the purchase of a relatively large number of servers to implement this untested data store, and would also require a large volume of data to be migrated to the data store all at once. According to the invention, a throttle may be set (e.g., at 10%) such that a small proportion of clients (identified on the basis of their GUID) are designated to migrate their customization data to the server and to use the server-stored data instead of client-stored data. Every time the client contacts the web site, the web site determines based on the GUID and the throttle whether to use the customization information from the server or the client. Mirror data may be stored on the client in order to support "reversibility" – i.e., if a scalability problem arises, the throttle may be turned down, and when the system determines that a particular GUID is no longer "throttled" to use server-side data, the client-side "mirror" copy of the data can be used. The mirror data may be destroyed or abandoned after the customization data has been migrated for all users (i.e., after the throttle has been turned up to 100%), and after the web site administrators have reached a level of confidence in the reliability of the feature.

F.   ISSUES

1.   Whether claims 8-14 were properly rejected under 35 U.S.C. § 103(a) over Eichstaedt in view of Pogue and further in view of Huston?

2.   Whether claims 26-30 were properly rejected under 35 U.S.C. § 103(a) over Eichstaedt in view of Pogue and further in view of Huston?

3.   Whether claims 33-39 were properly rejected under 35 U.S.C. § 103(a) over Eichstaedt in view of Pogue and further in view of Huston?

G.   GROUPING OF THE CLAIMS

Claims 8-14 are directed to a method and claims 33-39 are directed to computer readable media for effecting that method. Consequently, claim 8 and 33 stand and fall together. Similarly, the claims in the following pairs of claims stand and fall together: claims 9 and 34; claims 10 and 35; claims 11 and 36; claims 12 and 37; claims 13 and 38; and claims 14 and 39. Claims 26 – 30 are directed to a system and each stands or falls independently of the other claims.

H.   ARGUMENT

1.   **The Examiner did not establish a prima facie case that method claims 8–14 are obvious over the cited art. There is no motivation, suggestion or teaching in the cited art to combine the relevant teachings of the references.**

Appellants traverse the Examiner's rejection of Claims 8-14 under 35 U.S.C. § 103(a) over Eichstaedt in view of Pogue and further in view of Huston. Appellants traverse and submit that claims 8-14, are not obvious over the prior art of record.

a)   <u>THE CITED ART</u>

i)   **Eichstaedt**

Eichstaedt (US Patent No. 6,662,230, December 9, 2003) is directed to a method for dynamically limiting robot access to server data as requests are being made. The method includes the steps of receiving a request for a data object, recording a log entry for the request, calculating client request values, and refusing the request if a client request value exceeds one of a set of corresponding predefined maximum request values. Each log entry contains a client identifier, timestamp, and at least one data object identifier for the request. [Eichstaedt, Abstract].

ii)   Pogue

Pogue (US Patent No. 6,112,240, August 29, 2000) is directed to a method and apparatus to accurately and efficiently obtain and store information relating to use of a web site, and in particular re-accesses to web pages after such web pages have been downloaded into the cache memory in the client computer. Pogue utilizes a tracker tag in the code of the web page for initiating a client information tracking program. The tracking program is initiated by a tracker message transmitted from a web browser on the client computer to the tracking program when the tracker tag is read by the web browser. In one embodiment, the tracking program first obtains the client information, and then stores the client information in the memory of a computer having the tracking program.

iii)   Huston

Huston (US PAT APP PUB NO. 20020007402, January 17, 2002) discloses an approach to providing updated content to a cache used for storing content. For example, a first version of data is provided in response to receiving a first request for the data. In response to detecting, independent of any request for the data, that a second more recent version of the data is available, the second more recent version of the data is retrieved and stored in the cache. When a second user request for the data is received, the second more recent version of the data is retrieved from the cache and provided to the user.

b)   Claim 8 is not obvious in view of the cited references

The Examiner based the rejection of Claim 8 over Eichstaedt on the assertion that Eichstaedt discloses:

> "... a method comprising the acts of: selecting a group
> of user of the web site based on an identifier associated
> with each user [col. 8, lines 39-54; Eichstaedt discloses
> selecting users to gain access to specific web pages
> based on their client identifier]; and providing a web
> page to each of the selected group of users [col. 8, lines
> 39-54; Eichstaedt discloses that the selected users gain

access to specific web pages]". [*Examiners Final
Office Action,* dated 12/22/2004, p. 2 ¶ 4].

The portion of the specification of Eichstaedt that the Examiner references in
the rejection provides:

> "In the first step of FIG. 4, a request and client
> identifier 70 are obtained. Two types of request are
> possible. One is a simple GET message for a specific
> URL within the Web server. Alternately, the request
> may be a search query; in the example above for the
> PTO database, the query may be a keyword for a patent
> keyword search. An entry containing a client identifier
> and timestamp for the request is recorded in a log file
> 74 in step 72. Next, in step 76, the client identifier is
> compared with a deny list. If the client identifier is in
> the deny list, the request is refused, step 78. If the client
> identifier is not in the deny list, the request is processed
> in step 80; i.e., a search is performed for the query to
> generate a result set 82 containing result data objects. If
> the request does not require a search to be performed,
> then step 80 is unnecessary. In this case, result set 82
> contains one or more requested URLs."

No form of the word "select" is found in the portion of Eichstaedt
quoted by the Examiner. The reason, of course, is that in the method
disclosed by Eichstaedt there is no selection of the users for which data
will be copied to the central storage location. Eichstaedt is about detecting
robots and denying them access. Eichstaedt copies the data of <u>all</u> users
and then compares the stored data to new user data. Eichstaedt
discriminates between those users that are allowed access to the site data
and those who are not. Applicant's method does not discriminate between
users that are allowed access and those who are not. Rather the
Applicant's method is directed to converting a web site from client-based
storage of information to central storage of information. All users are
provided access to the sites however, the data used to provide access is
stored in a central storage for the selected users.

Eichstaedt teaches away from the method of claim 8 since denying
access to a web page does not motivate one to do the opposite (i.e. does

not motivate one to provide a web page). Since Eichstaedt teaches

denying access to a web page, the proposed combination with the other

references would render the method disclosed in Eichstaedt unsuitable for

its intended purposes, which negates a finding of obviousness.

In the 103 (a) rejection of claim 8 the Examiner applied Pogue and

advanced the following argument:

> "However, Pogue teaches a method for obtaining client
> information relating to a web page using a tracking
> computer that is remote from the client computer.
> Pogue teaches the limitation of copying data from each
> of the user's client computing devices to a central
> storage location [col. 6, lines 46-50; col. 7, lines 2-7,
> 23-24; Pogue discloses a tracker that obtains
> information (including user identification data) from
> cookies on client computer and copies the data to a
> database]."

The sections of the Pogue Patent referenced by the Examiner

provide:

> "FIG. 6 shows a second implementation that may be
> used for obtaining the client information. When used
> with this implementation, the tracker 310 uses cookies
> and common gateway interface (CGI) scripts to obtain
> the client information. An exemplary tracking tag may
> be as follows: [Col. 6, lines 46-50]
>
> ...
>
> In addition, the tracker 310 receives the last cookie, if
> any, that the web page received from the tracker 310.
> The cookie may include a unique identification number
> identifying the client computer 200 and/or the last web
> page in the web site 306 that was visited by such
> browser 302. [Col. 7, lines 2-7]
>
> ...
>
> The process then continues to step 610 where the client
> information is stored in the client information
> database." [Col.7 lines 23-24]."

The object of the method and apparatus disclosed in Pogue is to count the

number of times a visitor re-accesses a web page after the web page has been

downloaded to cache memory in the client computer. [Col. 1, lines 63-65]. Pogue does not disclose a method of method of converting a web site from client-based storage of information to central storage of information. Pogue does not disclose the step of selecting a group of users and the copying data from only those selected users to a central storage location. The combination of Pogue and Eichstaedt also fail to disclose those steps.

The Examiner applied Huston and stated the following:

> "Thomas Huston teaches a method for managing and providing web pages to users. Thomas Huston teaches the limitation of providing a web page based on data stored in a central storage location [par. 0043; Thomas Huston discloses a server that maintains user-specific web page URLS]."

Nothing in Huston suggests a method of converting from client-based storage of information to central storage of information. Indeed all of the information in the cache is in the traffic servers as clearly specified in the section of Huston referenced by the Examiner.

In proceedings before the Patent and Trademark Office, the Examiner bears the burden of establishing a *prima facie* case of obviousness based upon the prior art. *In re Piasecki,* 745 F.2d 1468, 1471-72, 223 USPQ 785, 787-88 (Fed. Cir. 1984). It is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the prior art so that the claimed invention is rendered obvious. *In re Gorman,* 933 F.2d 982, 987, 18 USPQ2d 1885, 1888 (Fed. Cir. 1991). In regard to claim 8, the Examiner has combined a reference directed to a method for limiting access to a network (Eichstaedt), with a reference directed to a method for tracking the number of times a user re-accesses web pages after those web pages are downloaded into the cache memory of a user computer (Pogue), and a reference directed to maintaining updated content to a cache used for storing content. The Examiner then concludes that the combination of references render obvious a method of converting a web site from client-based storage of information to central storage of information. The MPEP 706.02(j) clearly states that the initial burden is on the examiner to provide some suggestion of the desirability of doing what the inventor

has done. There is no suggestion in any of the references of the desirability of converting a web site from client-based storage of information to central storage of information. There is no disclosure or suggestion in any of the references of the step of selecting a group of users of the web site (to be converted from client-based storage of information to central storage of information), copying data from the selected users and using the copied data to provide the web page. It is submitted that the Examiner has failed to meet the burden of establishing a *prima facie* case of obviousness for claim 8.

c)   Claim 9 is not obvious in view of the cited references

Claim 9 is separately patentable from claim 8, because the limitation of using a hash value of the identifier associated with each user as the determining factor of which user information will be copied to central storage adds a novel and non-obvious step to the method of the invention of claim 8.

The Examiner rejected claim 9, stating in part:

> "col. 6, lines 43-62; Eichstaedt discloses calculating a
> request value (hash value) from a client identifier."

The word "hash" does not appear anywhere in the Eichstaedt reference. Note that a hash is a number generated from a string of text. The hash can be substantially smaller than the text itself, and is generated by a formula in such a way that reduces the chance that some other text will produce the same hash value. Eichstaedt describes the client request value as follows:

> "in one embodiment, the calculated client request values
> include a request frequency for that client, calculated
> from the current log entry and from previous log entries
> associated with the same client identifier. The set of
> corresponding predefined maximum request values
> include a maximum request frequency, and the client's
> request frequency is compared with the maximum
> request frequency to determine whether the, client
> should be refused access. [Eichstaedt, Col. 4, lines 4-
> 11]."

That language does not suggest a hash. Eichstaedt determines which users will be denied access in a purposeful way (i.e. based on an analysis of their usage patterns). The method of claim 9 recites the step of selecting users by computing a hash value and determining whether the hash value meets a predetermined criteria.

This results in selection in an intentionally random way. Substituting the claimed selection step in Eichstaedt would render Eichstaedt unfit for its intended purpose.

The Examiner goes on to state:

> "...Thomas Huston discloses computing the hash of user ID data ..."

What Huston discloses is:

> "or example, in the context of web page content, web pages may be stored in traffic server caches using a **hash table** of web page Uniform Resource Locators (URLs) and user identification (ID) data. [Huston, Par. 43, emphasis added]."

A hash table is a dictionary in which keys are mapped to array positions by hash functions. (from Dictionary of Algorithms and Data Structures, Paul E. Black, ed., NIST.http://www.nist.gov/dads/HTML/hashtab.html). Thus Huston does not disclose using a hash value of the user identifier to determine what data will be transferred to a central storage. Huston in effect discloses a data structure to be able to determine content associated with a user. The combined references do not teach the selection of which users will be converted from a client-based storage system to a central storage system by computing a hash of the user ID and determining whether the hash meets a predetermined criteria. It is submitted that the Examiner has failed to meet the burden of establishing a *prima facie* case of obviousness for claim 9.

d)   Claim 10 is not obvious in view of the cited references

Claim 10 is separately patentable from claim 9, because the added step of determining whether the hash value meets predetermined criteria is patentably distinct from the other steps that can accomplish the same result.

The Examiner rejected Claim 10 by again misconstruing Eichstaedt as disclosing the use of a hash value. It does not. Eichstaedt counts the number of times a user accesses a site and purposefully denies access if the number exceeds a predetermined level. As stated above, neither Eichstaedt nor Huston disclose the use of a hash value as a way of selecting which users will be switched from a client based storage to a central storage. The combination of Eichstaedt and Huston teach further

away from the claimed method in that the hash table in Huston is used to key web page content in a cache to the user ID. In Huston the web pages accessed by a user will be stored in the cache, and when a user seeks to access the web page again, the cached page (that may have been updated) will be presented to the user. Thus there is no selection of where data that will be used to provide the web page will be stored. In the claimed method, the hash of the user ID is used to select users whose data that will be accessed by the web site will be transferred from the user's computer (client based storage) to a central computer (central based storage). Unlike Huston, in the claimed method the entire webpage is not cached in a traffic server. It would not be reasonable to combine a reference that discloses a method to prevent access to a website with one discloses a method for providing repetitive and updated access to a website and argue that it suggests a method for converting a web site from a from one that accesses data stored in the user's computer to one that accesses data stored in a central computer.

It is submitted that the Examiner has failed to meet the burden of establishing a *prima facie* case of obviousness for claim 10, and that claim 10 is patentable over the cited references.

e) **Claim 11 is not obvious in view of the cited references**

Claim 11 is separately patentable from claim 10, because the added step of determining whether the hash value is less than the preset value is patentably distinct from the other steps that can accomplish the same result.

The Examiner rejected Claim 11 by again misconstruing Eichstaedt as disclosing the use of a hash value. It does not. Eichstaedt determines how many times a user has attempted access to specific content. If that number exceeds a preset value the method disclosed in Eichstaedt denies the user access to the content. As stated above, Eichstaedt teaches away from the claimed method. None of the references teaches the use of comparing the hash value of a user identifier to a predetermined value as a way of selecting where a website will look for data.

It is submitted that the Examiner has failed to meet the burden of establishing a *prima facie* case of obviousness for claim 11.

f)   Claim 12 is not obvious in view of the cited references

Claim 12 is separately patentable from claim 8, because the added step of setting an indication for each user for whom data has been copied to the central location allows for the reversible nature of the methods disclosed and is patentably distinct from claim 8.

The examiner rejected claim 12 by equating "setting an indication for each user for whom data has been copied to a central location" with "storing the user id." The applicant's claimed method copies data including a user id and also sets and indicator that the data has been copied. This step is not disclosed in the references cited by the Examiner. It is submitted that the Examiner has failed to meet the burden of establishing a *prima facie* case of obviousness for claim 12 and that claim 12 is patentable over the cited references.

g)   Claim 13 is not obvious in view of the cited references

Claim 13 is separately patentable from claim 12, because the added step of "maintaining for one of the selected users, a mirror copy of that user's centrally-stored data at the user's computer" allows for the reversible nature of the methods disclosed and is patentably distinct from claim 12.

The examiner rejected claim 13 in effect stating that all references disclose the step of maintaining a mirror copy of the user's centrally stored data. The applicant explains the purpose of maintaining a mirror copy of the user's centrally stored data in the specification:

> "It will be appreciated that the premise for the incremental deployment of data store 304 is that it is a new feature that needs to be tested. Since the storage of customization data 306 in cookies file 304 has presumably been established to be robust through long-standing usage, maintaining a mirror copy of the data allows for a reliable backup of the data while the data

store 308 is being tested. [Specification, p. 16, lines 24-29]."

The cited art makes no suggestion of maintaining such backup data when converting a website from client-based storage of information to central storage of information. It is submitted that the Examiner has failed to meet the burden of establishing a *prima facie* case of obviousness for claim 13 and that claim 13 is patentable over the cited references.

h)   Claim 14 is not obvious in view of the cited references

Claim 14 is separately patentable from claim 8, because the added step of "maintaining for one of the selected users, a mirror copy of that user's centrally-stored data at the user's computer allows for the reversible nature of the methods disclosed and is patentably distinct from claim 8.

Claim 14 adds the step of deselecting one of the selected users and providing a webpage to the deselected user without using the user's data stored at the central storage location. The Examiner points to Eichstaedt as disclosing that the predetermined request value can be lowered to allow fewer users to be in the selected/allowed group. This position shows a basic misunderstanding of the difference between the applicant's invention and the Eichstaedt disclosure. In Eichstaedt an administrator selects the maximum number of visits to a site that will be allowed. In claim 14 a user whose data has been selected to be transferred to a central location, may be deselected without impeding the user's access to the webpage. It is submitted that the Examiner has failed to meet the burden of establishing a *prima facie* case of obviousness for claim 14 and that claim 14 is patentable over the cited references.

2.   The Examiner did not establish a prima facie case that system claims 26-30 are obvious over the cited art. There is no motivation, suggestion or teaching in the cited art to combine the relevant teachings of the references.

Appellants traverse the Examiner's rejection of Claims 26-30 under 35 U.S.C. § 103(a) over Eichstaedt in view of Pogue and further in view of Huston.. Appellants traverse and submit that claims 26-30 are not obvious over the prior art of record.

Claims 26-30 are directed to a system for providing a web site. The claimed system includes a throttle module which selects certain ones of said second computing devices for storage of their respective customization information in said data store.

a)   Claim 26 is not obvious in view of the cited references

The core of the Examiner's argument in rejecting claim 26 is quoted below:

> " [par. 0043; Thomas Huston discloses that a traffic
> server (data store) stores user-specific web pages URLs
> (customization information)]; a throttle module which
> selects certain ones of said second computing devices
> [col.6, lines 43-59; Eichstaedt discloses selecting client
> machines (second computing devices)] for storage of
> their respective customization information in said data
> store ..."

b)   Claim 27 is not obvious in view of the cited references

Claim 27 is separately patentable from claim 26, because the added element of a customization module specifies that the source web page customization information depends on whether the user is a selected user. Claim 27 is patentably distinct from claim 26.

The examiner asserted that the cited references disclose a customization module as claimed in claim 27. However, in addition to the references not disclosing, suggesting or even hinting at the throttle element as discussed above, the references do not suggest that the source of information to be used for website customization is at a different location depending on whether the user has been selected or not. It is

submitted that the Examiner has failed to meet the burden of establishing a *prima facie* case of obviousness for claim 27 and that claim 27 is patentable over the cited references.

c)   Claim 28 is not obvious in view of the cited references

Claim 28 is separately patentable from claim 26, because it incorporates the added element of a hashing module which is a novel way to select and deselect the users for the purposes stated in the claim. Claim 28 is patentably distinct from claim 26.

The examiner rejected claim 28 based primarily on the mistaken assumption that Eichstaedt's request values are hashed. See discussion above relating to claim 9. It is submitted that the Examiner has failed to meet the burden of establishing a *prima facie* case of obviousness for claim 28 and that claim 28 is patentable over the cited references.

d)   Claim 29 is not obvious in view of the cited references

Claim 29 is separately patentable from claim 26, because it incorporates the added element of a throttle value storage location and the interaction of the throttle module with the throttle value. Claim 28 is patentably distinct from claim 26.

The Examiner rejected claim 29 primarily by equating the "throttle value" to the "predefined maximum request value." The two are not the same nor are they analogous. It is submitted that the Examiner has failed to meet the burden of establishing a *prima facie* case of obviousness for claim 29 and that claim 29 is patentable over the cited references.

e)   Claim 30 is not obvious in view of the cited references

Claim 30 is separately patentable from claim 26, because it incorporates the added limitation of selecting certain ones of said second computing devices in a predetermined proportion of the total number of second computing devices. Claim 30 is patentably distinct from claim 26.

The Examiner rejected claim 30 primarily based on the erroneous conclusion that: :

> "[col. 6, lines 59-62; Eichstaedt discloses that the
> proportion of client machine (second input devices) that
> are selected can be adjusted]"

The referenced portion of the Eichstaedt reference states:

> "Predefined maximum request values are set by the
> system administrator or equivalent and can be changed
> as needed."

A "predefined maximum value" that can be changed is not the same as a "predetermined proportion" of a population. It is submitted that the Examiner has failed to meet the burden of establishing a *prima facie* case of obviousness for claim 30 and that claim 30 is patentable over the cited references.

3.   The Examiner did not establish a prima facie case that system claims 33-39 are obvious over the cited art. There is no motivation, suggestion or teaching in the cited art to combine the relevant teachings of the references.

Appellants traverse the Examiner's rejection of Claims 33-39 under 35 U.S.C. § 103(a) over Eichstaedt in view of Pogue and further in view of Huston.. Appellants traverse and submit that claims 33-39 are not obvious over the prior art of record.

Claims 33-39 are directed to a computer-readable medium encoded with computer executable instructions to perform a method of converting a web site from client-based storage of information to central storage of information.

a)   Claims 33-39 are not obvious in view of the cited references

The Examiner rejected claims 33-39 as reciting a computer-readable medium that perform the same method recited in claims 8-14 and rejected them under the same rationale as the rejection for claims 8-14. It is submitted that the Examiner has failed to meet the burden of establishing a *prima facie* case of obviousness for claims 33-39

and that claims 33-39 are patentable over the cited references for the same reasons as stated in claims 8-14.

I.   CONCLUSION

For the reasons presented above, the Examiner has failed to establish a proper basis for the rejections under 35 U.S.C. § 103. The Examiner is therefore requested to reconsider and withdraw the Final Rejection, and to allow the application in its present form.

Should the Examiner decline to withdraw the rejections under 35 U.S.C. § 103, the Board is requested to reverse the Examiner's rejection.

Favorable action with early allowance of all pending claims is earnestly requested.

Respectfully submitted,

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APPENDIX

8 (original). A method of converting a web site from client-based storage of information to central storage of information comprising the acts of:

selecting a group of users of the web site based on an identifier associated with each user;

copying data from each of the selected user's client computing devices to a central storage location; and

providing a web page to each of the selected group of users based on the copied data stored in said central storage location.

9 (original). The method of claim 8, wherein the act of selecting a group of users comprises:

computing a hash of each user's associated identifier; and determining, for each user, whether the hash value meets predetermined criteria.

10 (original). The method of claim 9, wherein the act of determining whether a hash value meets predetermined criteria comprises comparing the hash value to a preset value.

11 (original). The method of claim 10, wherein the act of comparing the hash value to a preset value comprises determining whether the hash value is less than the preset value.

12 (original). The method of claim 8, further comprising the act of:

setting an indication for each user for whom data has been copied to the central storage location.

13 (original). The method of claim 12, further comprising the act of:

maintaining, for one of the selected users, a mirror copy of that user's centrally-stored data at the user's client computing device.

14 (currently amended). The method of claim 8, further comprising the acts of:

deselecting one of the selected users;

providing a web page to the de-selected user without using the copy of the user's data stored at the central storage location.

15-25 (cancelled).

26 (original). A system for providing a web site comprising:

a first computing device which provides a web page to a plurality of second computing devices, each of said second computing devices being communicatively connected to said first computing device, said first computing device providing a customized version of said web page to each of said second computing devices based on customization information associated

with each of said second computing devices, each of said second computing

devices storing its respective customization information;

a data store which stores corresponding customization information for

at least some of said second computing devices;

a throttle module which selects certain ones of said second computing

devices for storage of their respective customization information in said data

store; and

a migration module which copies the customization information from

the selected ones of said second computing devices to said data store.

27 (original). The system of claim 26, further comprising:

a customization module which customizes the web page for each of the

second computing devices, wherein the customization is based on information

stored in the data store for the selected ones of the second computing devices,

and wherein the customization is based on information stored at the respective

second computing devices for the non-selected ones of the second computing

devices.

28 (original). The system of claim 26, wherein each of said second computing

devices is associated with an identifier, and wherein said system further comprises:

a hashing module which hashes the identifier for each of said second

computing devices,

wherein said throttle module receives a value from said hashing

module and selects certain ones of said second computing devices based on the

received value.

29 (original). The system of claim 26, wherein each of said second computing devices is associated with an identifier, and wherein said system further comprises:

a throttle value storage location;

wherein said throttle module selects certain ones of said second computing devices based on the value stored at the throttle value storage location and further based on the identifiers associated with the respective second computing devices.

30 (original). The system of claim 26, wherein said throttle module selects said certain ones of said second computing devices in a predetermined proportion to the total number of second computing devices.

31-32 (cancelled).

33 (new). A computer-readable medium encoded with computer-executable instructions to perform a method of converting a web site from client-based storage of information to central storage of information, the method comprising:

selecting a group of users of the web site based on an identifier associated with each user;

copying data from each of the selected user's client computing devices to a central storage location; and

providing a web page to each of the selected group of users based on the copied data stored in said central storage location.

34 (new). The computer-readable medium of claim 33, wherein the act of selecting a group of users comprises:

computing a hash of each user's associated identifier; and

determining, for each user, whether the hash value meets predetermined criteria.

35 (new). The computer-readable medium of claim 34, wherein the act of determining whether a hash value meets predetermined criteria comprises comparing the hash value to a preset value.

36 (new). The computer-readable medium of claim 35, wherein the act of comparing the hash value to a preset value comprises determining whether the hash value is less than the preset value.

37 (new). The computer-readable medium of claim 33, wherein the method further comprises:

setting an indication for each user for whom data has been copied to the central storage location.

38 (new). The computer-readable medium of claim 37, wherein the method further comprises:

maintaining, for one of the selected users, a mirror copy of that user's centrally-stored data at the user's client computing device.

39 (new). The computer-readable medium of claim 33, wherein the method further comprises:

deselecting one of the selected users;

providing a web page to the de-selected user without using the copy of the user's data stored at the central storage location.